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7IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,

Plaintiff

v.

SCI CAMP HILL,

Defendant

: CIVIL ACTION NO. 1:CV-01-0972

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:

(Judge Kane)

(Magistrate Judge Blewitt)

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SCRANTON

NOV 8 2001

PER AS
DEPUTY CLERK**REPORT AND RECOMMENDATION**

Plaintiff, an inmate at the State Correctional Institution at Rockview, originally filed this action on August 7, 2000, in the Western District of Pennsylvania, pursuant to 42 U.S.C. § 1983. The matter was transferred to the Middle District of Pennsylvania on May 29, 2001, and received in the district on May 31, 2001. (Doc. 1). Presently ripe for disposition is the Defendant's renewed Motion to Dismiss the Plaintiff's Complaint pursuant to Federal Rule of Civil Procedure 12(b)(1) and (6). (Doc. 2).

I. Allegations of the Complaint.

The Plaintiff alleges that his Eighth Amendment rights were violated when he was placed in a cell that was infested with rodents, had a leaky sink and toilet, unsanitary blankets, filthy floors and windows, poor ventilation, and the stench of sewage.

II. Motion to Dismiss Standard.

The Defendant seeks to dismiss the complaint for failure to state a claim. Fed.R.Civ. P. 12(b)(1) and (6). When evaluating a motion to dismiss, the court must accept all material allegations

of the complaint as true and construe all inferences in the light most favorable to the plaintiff. *Scheuer v. Rhodes*, 416 U.S. 232, 236 (1974). A complaint should not be dismissed for failure to state a claim unless it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson*, 355 U.S. 41, 45 (1957); *Ransom v. Marrazzo*, 848 F.2d 398, 401 (3d Cir. 1988). A complaint that sets out facts which affirmatively demonstrate that the plaintiff has no right to recover is properly dismissed without leave to amend. *Estelle v. Gamble*, 429 U.S. 97, 107-108 (1976).

III. Discussion.

The Defendant first moves to dismiss the claim based upon the Eleventh Amendment. The Eleventh Amendment applies to claims asserted in federal court under 42 U.S.C. § 1983. *Quern v. Jordan*, 440 U.S. 332 (1979). It prohibits suits brought in federal court against a state or where the state or its agency is the real party in interest, and in which the relief sought has an impact directly on the state itself. *Pennhurst State Schools and Hospital v. Halderman*, 465 U.S. 89 (1984); *Allegheny County Sanitary Authority v. United States Environmental Protection Agency*, 732 F.2d 1167 (3d Cir. 1984). Based on the above, the Plaintiff's claim against SCI Camp Hill is barred by the Eleventh Amendment and, thus, is subject to dismissal.


Further, if we were to find that this Defendant were not immune, the Plaintiff would still be unable to maintain the action. Departments or agencies of a state, such as SCI Camp Hill, are not persons for purposes of maintaining an action under 42 U.S.C. § 1983. *Will v. Michigan Department of State Police*, 491 U.S. 58 (1989); *Mt. Healthy City Board of Education v. Doyle*, 429 U.S. 274 (1977). SCI Camp Hill has no existence apart from the state. It cannot be considered a

person for purposes of maintaining an action under 42 U.S.C. § 1983.

However, the Defendant recognizes that the Plaintiff has argued that he should be permitted to amend his complaint. (Doc. 2, p. 4, f.n. 1). Based upon the Plaintiff's argument, it would be appropriate in this case to grant the Plaintiff leave to file an amended complaint to identify the individuals responsible. It will therefore be recommended that the Plaintiff be afforded the opportunity to amend the complaint.

IV. Recommendation.

Based on the foregoing, it is respectfully recommended that the Defendant's motion to dismiss the complaint (**Doc. 2**) be granted. It is further recommended that the Plaintiff be afforded the opportunity to amend his complaint, and that the matter be remanded to the undersigned for further proceedings.



THOMAS M. BLEWITT
United States Magistrate Judge

Dated: November 8, 2001

UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

CHRISTOPHER LEROY PETERSON,	:	CIVIL NO. 1:CV-01-0972
	:	
Plaintiff	:	
	:	(Judge Kane)
v.	:	
	:	(Magistrate Judge Blewitt)
SCI CAMP HILL,	:	
	:	
Defendant	:	

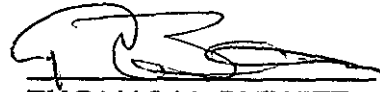
NOTICE

NOTICE IS HEREBY GIVEN that the undersigned has entered the foregoing
Report and Recommendation dated November 8, 2001.

Any party may obtain a review of the Report and Recommendation pursuant to
Rule 72.3, which provides:

Any party may object to a magistrate judge's proposed findings, recommendations or report addressing a motion or matter described in 28 U.S.C. § 636 (b)(1)(B) or making a recommendation for the disposition of a prisoner case or a habeas corpus petition within ten (10) days after being served with a copy thereof. Such party shall file with the clerk of court, and serve on the magistrate judge and all parties, written objections which shall specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis for such objections. The briefing requirements set forth in Local Rule 72.2 shall apply. A judge shall make a *de novo* determination of those portions of the report or specified proposed findings or recommendations to which objection is made and may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. The judge, however, need conduct a new hearing only in his or her discretion or where required by law, and may consider the record developed before the

magistrate judge, making his or her own determination on the basis of that record. The judge may also receive further evidence, recall witnesses or recommit the matter to the magistrate judge with instructions.

A handwritten signature in black ink, appearing to read 'T. M. Blewitt', with a stylized flourish extending to the right.

THOMAS M. BLEWITT
United States Magistrate Judge

Dated: November 8, 2001

UNITED STATES DISTRICT COURT
FOR THE
MIDDLE DISTRICT OF PENNSYLVANIA

* * MAILING CERTIFICATE OF CLERK * *

November 8, 2001

Re: 1:01-cv-00972 Peterson v. SCI-Camp Hill

True and correct copies of the attached were mailed by the clerk
to the following:

Christopher Leroy Peterson
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DW6560
EE-5357
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Bellefonte, PA 16823-0820

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Office of the Attorney General
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Harrisburg, PA 17120

cc:

Judge	()	() Pro Se Law Clerk
Magistrate Judge	()	() INS
U.S. Marshal	()	() Jury Clerk
Probation	()	
U.S. Attorney	()	
Atty. for Deft.	()	
Defendant	()	
Warden	()	
Bureau of Prisons	()	
Ct Reporter	()	
Ctroom Deputy	()	
Orig-Security	()	
Federal Public Defender	()	
Summons Issued	()	with N/C attached to complt. and served by: U.S. Marshal () Pltf's Attorney ()
Standard Order 93-5	()	
Order to Show Cause	()	with Petition attached & mailed certified mail to: US Atty Gen () PA Atty Gen ()

JB 11/8/01